

Vindicating a right to an administrative option – McGuire v. Peabody Hotel

Florida now recognizes that when a person is not treated equal because of his or her disability, this is discrimination, and is actionable under the Florida Civil Rights Act.

In 1968, at the age of seven years old, Kevin McGuire, was hit by a drunk driver and was paralyzed from the neck down. By 1970, McGuire regained the use of his upper body but remained paralyzed from the waist down. Since the accident, he is required to use a wheelchair for mobility. Kevin's business consists of advising clients on how to make sure that their projects and different venues comply with the disability access requirements. In the course of his business, he was contacted by the Orlando Magic to ensure that their arena complied with the disability access requirements. Kevin's office made a reservation, in advance, to stay for two nights at the Peabody Orlando, a Peabody Hotel Group hotel, in Orlando, Florida. At the time the reservation was made with Peabody Hotel staff, Kevin asked for a wheelchair accessible room.

On or about June 14, 2010, between two and three AM, Kevin McGuire arrived at the Peabody Hotel. There was only one hotel representative available to check-in guests. Even though Kevin requested an accessible room, it did not have a room available with a roll-in shower. Instead, they sent Kevin to three different rooms which they claimed were accessible. Kevin was brought to one room, which did not have a wheelchair accessible bathroom. He was then brought to a second room. The second room did not have a wheelchair accessible bathroom either. After being escorted to a third room that did not have a wheelchair accessible bathroom, Kevin was upset. Since he was unable to use any of the rooms, he had no choice but to leave the hotel property and was forced to find lodging at another hotel at Three AM in the morning.

May 27, 2011, Kevin filed a Public Accommodations Complaint of Discrimination with the Florida Commission on Human Relations. In its defense, the hotel did not dispute any of McGuire's allegations, but attributed the failure to have accessible features due to the ongoing renovations to the hotel, but despite Mr. McGuire's inconvenience, they were now fully Americans with Disabilities Act (ADA) compliant, and if Mr. McGuire chose to return to the hotel, he would have a different experience. The Peabody Hotel expressed regret at the "inconvenience" that Mr. McGuire experienced.

Instead of attempting to conciliate the case, the FCHR decided to dismiss Mr. McGuire's claims based upon a lack of jurisdiction. The FCHR acknowledged that the Peabody Hotel is a "public accommodation" under the Florida Civil Rights Act,

and also found that Mr. McGuire had to leave the Peabody Hotel as no rooms were accessible to a person with a mobility impairment due to the lack of an accessible shower. However, the FCHR denied Mr. McGuire all relief due to the following statement:

All assertions relate to design, construction and accessibility. The Florida Commission on Human Relations does not have jurisdiction to enforce the ADA. Additionally, as to any issues concerning the alleged failure to provide a room meeting the petitioner's criteria, it is unrefuted that the Respondent made all efforts possible under the circumstances to accommodate the demands, to no avail.

As a result, the case was dismissed. On January 10, 2012, Kevin McGuire appealed the FCHR's finding to the appeals court.

The appeals court reversed and in a published decision, McGuire v. Peabody Hotel Grp., 99 So. 3d 984 (Fla. Dist. Ct. App. 2012), found that the existence of architectural barriers in a hotel constituted discrimination, as defined by the Florida Civil Rights Act, as such barriers may deny Mr. McGuire "by denying him the full and equal enjoyment of the hotel's goods, services, facilities, privileges, advantages, and accommodations guaranteed by section 760.08.

Last year, Kevin founded a new business, "It's called Able Road," he said. "It's a Yelp-like, Angie List-like, Zagat-like website and apps that allows you to rate interview and comment on any property, pretty much in the world, from a hearing site, cognitive mobility perspective." For more information, go to <http://ableroad.com>